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硕 士 学 位 论 文

预防和处置群体性事件法律对策研究

A Study on Legal Countermeasures for Prevention and
Disposition of Group Incidents

倪 强

指导教师姓名: 朱 炎 生 教 授

专 业 名 称: 民 商 法 学

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评 阅 人:_____

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内 容 摘 要

社会结构调整和经济体制改革过程中,利益冲突明显加剧,群体性事件呈高发态势,成为和谐社会建设中不和谐的音符。对群体性事件的研究,不仅要了解其特点,掌握其动向,更应该研究在群体性事件的预防和处置过程中存在的法律问题,并提出相应对策,使群体性事件的处置由行政意志变为依法进行。既保障人民民主权利和权益,又保障社会稳定和促进和谐社会之建设。

全文除了前言和结束语外，共分四章。

前言指出对群体性事件缺乏整体的法律应对策略，处置不当，则必势将影响和谐社会之构建，说明加强研究之必要。

第一章福建省群体性事件现状调查。该章对当前群体性事件的基本特征进行了概括,并考虑本文的中心论点及论述的需要,将当前群体性事件以所发生的社会关系领域为着眼点进行以下划分:产生、发展于私权领域的;产生于私权领域,但演化、发展为公权领域的;产生、发展于公权领域的。

第二章群体性事件的法律定位。该章对群体性事件的概念进行了界定，对用“人民内部矛盾”政治术语进行界定，并对“一味强调行政强硬手段”或“无原则的息事宁人”的两种理念进行辩驳，指出了群体性事件目前存在的认识误区。同时，阐明群体性事件的法律属性可以归结与两种基本公民权利，即“请愿权”、“联合行动权”。

第三章预防、调控和处置群体性事件中的法律问题。该章着重分析在群体性事件的预防、调处、处置中和处置后的不同阶段出现的法律问题，特别对征地拆迁、集体性环境污染等较为复杂的群体性事件在调处中存在的法律问题重点辨析。

第四章处理群体性事件的法律对策。本章着力提出解决群体性事件不同阶段相关法律问题的途径和方法,并就完善处置群体性事件的专项立法问题提出建议和构想。

结束语对本文总体思路加以回顾，并坦陈本文缺憾。

关键词: 群体性事件; 法律问题; 法律对策

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ABSTRACT

In the course of social structure adjustment and economic system reform, conflicts of interests are conspicuously aggravated and group incidents occur frequently, which becomes a disharmonious note in the construction of a harmonious society. As for the study of group incidents, we not only have to know their characteristics and tendency, but we should pay more attention to the prevention of group incidents and legal problems arising in dealing with such cases. Corresponding countermeasures should be proposed, which enable us to handle group incidents according to law instead of administrative will. Then, not only can we guarantee the people's democratic rights, but we can also maintain the social stability and facilitate the construction of the harmonious society.

Besides foreword and conclusion, the main body of the dissertation is divided into four chapters.

The foreword points out that we lack holistic legal countermeasures for group incidents. Any improper disposition is sure to influence the construction of the harmonious society. A study on it is therefore very necessary.

Chapter One -- An investigation of the status quo of group incidents in Fujian Province. This chapter generalizes the basic characteristics of current group incidents. Considering the general point of the dissertation and the convenience to expound, on the basis of the realm of social relations where group incidents happen, group incidents are divided as follows: those born and developed in private rights domain; those born in private rights domain but developed in public rights domain; and those born and developed in public rights domain.

Chapter Two -- Legal orientation of group incidents. This chapter explains the concept of group incidents, defines the political term "contradiction among the people", refutes "the emphasis on tough administrative measures" or "giving way to avoid trouble without any principle", and points out misunderstanding existing in present group incidents. Meanwhile, the chapter elucidates that the legal attributes of group incidents can boil down to two fundamental rights and duties of citizens, that is "right of petition" and "joint action right".

Chapter Three -- Legal problems in the course of preventing, mediating and disposing group incidents. This chapter analyzes legal problems occurred in different phases of preventing, mediating and disposing group incidents, laying special stress on differentiation and analysis of legal problems existing in mediating group incidents such as land requisition and relocation, collective environmental pollution.

Chapter Four -- Legal countermeasures for handling group incidents. This chapter puts forward approaches and measures to solve related legal problems of group incidents at different phases and suggestions and conceived ideas on perfecting special legislation on disposing group incidents.

The conclusion reviews the general thinking path of the dissertation, and frankly states the dissertation's imperfection.

Key words: group incidents; legal problems; legal countermeasures

目 录

前 言	1
第一章 福建省群体性事件现状调查	2
第一节 群体性事件的基本特征	2
一、数量及规模日趋增大	2
二、形态多样，有日趋激烈的趋势	2
三、参加主体多元化，发生原因复杂	3
四、组织性越来越强	3
五、参加人员的法律意识和运用法律手段的能力有所增强	4
第二节 群体性事件的基本类型	4
一、纯属私权领域的群体性事件	4
二、产生于私权领域，但逐步演化、发展为公权领域的群体性事件	5
三、属于公权领域的群体性事件	5
第二章 群体性事件的法律定位	8
第一节 群体性事件的概念	8
一、词义辨析	8
二、群体性事件的定义	8
第二节 群体性事件的法律属性	9
一、对群体性事件法律性质上的认识误区	9
二、群体性事件的法律属性	11
第三章 预防、调控和处置群体性事件中的法律问题	18
第一节 群体性事件预防中的法律问题	18
一、防范措施选择中的政策与法律冲突	18
二、政府职能部门的分工不清	18
三、群体性事件组织者募集的活动经费的处理	19
四、参与者人身自由的限制	19

第二节 群体性事件调处阶段的法律问题	20
一、因城市房屋拆迁所致群体性事件的调处	20
二、因征用农民土地所致群体性事件的调处	26
三、因群体性环境污染损害所致群体性事件的调处	27
四、调处群体性事件中律师的介入	29
第三节 群体性事件处置行动中的法律问题	31
一、审批权	31
二、处置的主体资格不明	31
三、执法的决定权与执行权分离	32
四、临场处置	33
五、执法配备	34
第四节 群体性事件处置后的法律问题	34
一、处置群体性事件中的警察行为	34
二、执法后果的承担	35
三、处置工作的执法尺度	35
四、取证	37
第四章 处理群体性事件的法律对策	39
第一节 事前防范的法律对策	39
一、借鉴公安大接访，完善信访制度	39
二、消除“恶法”，加强普法教育	39
三、建立预警机制，制定处置预案	40
四、依法办案，控制重点人员	41
第二节 群体性事件调处阶段的法律对策	42
一、拆迁补偿的法律解决	42
二、征地制度及补偿的法律解决	46
三、集体性环境污染的法律解决	51
四、律师介入的法律解困	52
第三节 处置行动中有关问题的法律对策	53
一、政策与法律困境的解读	53

目 录

二、谨慎对待“罢工、罢市、罢课”等行为	54
三、执法决定权与执行权分离的解决	55
四、增强有关法律法规的可操作性	55
五、证据收集的合法化对策	57
六、处置群体性事件的专项立法建议	59
结 束 语	63
参考文献	64

厦门大学博硕士论文摘要库

CONTENTS

Preface	1
Chapter 1 An investigation of the status quo of group incidents in Fujian Province.....	2
Subchapter 1 Basic characteristics of group incidents	2
Section 1 The number and scale of group incidents are becoming increasingly larger	2
Section 2 Various in form and having a tendency to be increasingly drastic	2
Section 3 Plural subject of participation and complicated occurrence reasons.....	3
Section 4 Becoming well-organized	3
Section 5 Legal consciousness of participants and their ability to apply laws are increased	4
Subchapter 2 Types of group incidents	4
Section 1 Group incidents born and developed in private rights domain	4
Section 2 Group incidents born in private rights domain but developed in public rights domain	5
Section 3 Group incidents born and developed in public rights domain	5
Chapter 2 Legal orientation of group incidents.....	8
Subchapter 1 Concept of group incidents.....	8
Section 1 Analysis of the concept.....	8
Section 2 Definition of group incidents	8
Subchapter 2 Analysis of the legal attributes of group incidents	9
Section 1 Misunderstanding existing in the perception of legal nature of group incidents.....	9
Section 2 Legal attributes of group incidents.....	11
Chapter 3 Legal problems in the course of preventing, mediating and disposing group incidents.....	18
Subchapter 1 Legal problems in preventing group incidents.....	18
Section 1 Conflicts between policy and law in choosing precautionary measures.....	18

Section 2	Division of government's functional departments.....	18
Section 3	Disposal of fund raised by group incidents' organizers.....	19
Section 4	Restriction of the personal freedom of participants.....	19
Subchapter 2	Legal problems at the phase of mediating group incidents	20
Section 1	Mediating group incidents caused by the demolition and removal of urban houses.....	20
Section 2	Mediating group incidents caused by confiscating land from rural landlords	26
Section 3	Mediating group incidents caused by the damage of collective environmental pollution.....	27
Section 4	Intervention of lawyers in mediating group incidents	29
Subchapter 3	Legal problems in dealing with group incidents	31
Section 1	Administrative examining and approving power	31
Section 2	Qualification of the subject is not clear.....	31
Section 3	Law's imperative powers and civil enforcement rights are Separated	32
Section 4	On-the-spot disposal	33
Section 5	Equipment for law enforcement.....	34
Subchapter 4	Legal problems after dealing with group incidents.....	34
Section 1	Police conduct in dealing with group incidents.....	34
Section 2	Taking the consequence of law enforcement.....	35
Section 3	Law enforcement measures.....	35
Section 4	Obtaining testimony.....	37
Chapter 4	Legal countermeasures for handling group incidents... 39	
Subchapter 1	Legal countermeasures for precaution beforehand	39
Section 1	Referring to public security organs' "opening the door to receive visitors from the localities appealing (to the police) for help", perfecting the system of letters and calls ..	39
Section 2	Abolishing "the evil law", strengthening the education of popularizing knowledge of national laws.....	39
Section 3	Establishing an early warning mechanism and emergency disposal plans.....	40
Section 4	Handling cases according to law, monitoring key persons	41

Subchapter 2	Legal countermeasures at the phase of mediating group incidents	42
Section 1	Legal solution to the compensation for removal	42
Section 2	Legal solution to land expropriation system and compensation for requisition of land.....	46
Section 3	Legal solution to collective environmental pollution	51
Section 4	Legal solution to lawyer's intervention.....	52
Subchapter 3	Legal countermeasures for related problems in the action of disposition	53
Section 1	Understanding policy and predicament of law.....	53
Section 2	Dealing with "strike, shopkeepers' strike, students' strike" etc. with caution.....	54
Section 3	Solving the problem of the separation of imperative powers and civil enforcement rights in law enforcement.....	55
Section 4	Increasing the operability of related laws and regulations	55
Section 5	Legalization countermeasures for collecting evidence.....	57
Section 6	Suggestions on special legislation on disposing group incidents ...	59
Conclusion	63
Bibliography	64

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前 言

现代生活中，群体性事件作为一种普遍的社会现象，由于政治、经济、法律、社会等多种因素掺杂其中，客观存在于世界各个国家中，也是各国政府都普遍感到头疼和棘手的一个问题。当前，我国正处于社会结构转型和体制转轨同时进行的过程中，各种利益主体之间、新旧体制之间和新旧观念之间的种种矛盾冲突凸显出来。特别是企业改制、征地拆迁、下岗就业、劳资纠纷等矛盾不断增多，因此它是社会矛盾以较为剧烈的方式的集中爆发。在我国构建社会主义和谐社会的大背景下，群体性事件已经成为社会不和谐的音符之一。为了快速有效、稳妥合法地处置好各种群体性事件，最大限度地减小此类事件对社会造成的现实危害和不良影响，笔者认为，从法律的角度对群体性事件中的法律问题进行定性、分类和分阶段研究，是依法处置群体性事件的关键所在。

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